

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00039/2015

Jodhpur, this the 23rd day of August, 2016

Reserved on 19.08.2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

Jyoti Mathur D/o Late Shri Mukesh Bihari Mathur, aged about 30 years.
Permanent Address: Behind Zila Parishad, Nayapura, Kota-324 001.
Present Address: 18/715, Chopasani Housing Board, Jodhpur- 342 008.

.....Applicant

Mr. Ankur Mathur, counsel for applicant.

Versus

1. The Union of India through the General Manager, North Western Railway, Jaipur, Rajasthan.
2. The General Manager, North West Railway, Jaipur (Raj.).
3. The Divisional Railway Manager, North West Railway, Bikaner (Raj.).

.....respondents

Mr. Salil Trivedi, counsel for respondents.

ORDER (Oral)

The applicant has filed this OA for seeking compassionate appointment after the death of her father on 10.08.2012.

2. Briefly stated, the facts of the case are that Shri Mukesh Bihari Mathur (deceased) was working on the post of TCM Helper SSI/TELI/Sadalpur, Bikaner Mandal North Western Railway. Unfortunately he expired on

10.08.2012 while in harness, leaving behind his ailing wife and only daughter (applicant) to survive on their own. The mother of the applicant is a lady, reportedly suffering from serious chronic multiple diseases like non-functioning of the kidney and chronic heart disease and other consequential disabilities. Hence the daughter of the deceased i.e. the applicant applied to the respondents for being considered for compassionate appointment. In support of her contention, the applicant has submitted the medical documents of her mother. It has further been stated that after demise of her father, the applicant is the only child. She took over the family responsibilities and became the first reported woman in the entire State to wear 'Pagadi' for the purpose of completing the ceremony of the last rites of her father. In other words, she showed the courage of undertaking the responsibilities of a son in an extremely traditional society.

3. Being the only child of her parents, she applied to the respondents for compassionate appointment vide application dated 20.10.2012 in lieu of the services rendered by her father and taking cognisance of the vulnerable conditions of the family. This was followed by various other representations dated 04.06.2013, 04.12.2013 and 12.12.2013 reiterating the same facts and making the same request. The applicant submits, that she is otherwise eligible, in every respect, to be considered to such a post, in accordance with guidelines/eligibility conditions stipulated in various circulars, issued on the subject, from time to time. Vide impugned order dated 11.03.2014 the

respondent department informed the applicant that her case for appointment on compassionate grounds cannot be considered. The reasons for rejection, the missive mentioned, were already communicated vide letter dated 05.12.2012 of the respondent department.

4. The respondents aver, that the wife of the deceased employee, applied for compassionate appointment for her married daughter Smt. Jyoti Mathur (Applicant) after the death of her husband. The request of Smt. Saroj Mathur was considered by the competent authority in accordance with the rules, and she was informed by the respondents vide letter dated 05.12.2012 that her request for appointment on compassionate ground to her daughter (applicant) is not acceptable as per rules.

5. Heard learned counsels for the both sides. During the course of arguments, the learned counsel for the respondents submitted that vide communication dated 05.12.2012 (Annexure-R/1) the respondents informed the applicant's mother that Jyoti Mathur is a married daughter and not dependent upon the widow of the deceased. Also, she is living with her husband at Kota, hence her claim for appointment on compassionate grounds cannot be considered by the department. The respondents also state that the OA is barred by limitation and is liable to be dismissed on this ground alone.

6. Replying to the arguments advanced by the respondents, the learned counsel for the applicant states, that the so called letter dated 05.12.2012, was

never received by the mother of the applicant. He then went through the clarification issued by the Railway Board regarding eligibility, or otherwise, of appointment on compassionate grounds for different categories (Annexure-A/8). At point no.1, to a clarification sought, as to whether the married daughter can be considered for appointment on compassionate grounds- the decision of the Board as per Circular No.E (NG) III/78/RC-1/1 dated 03.02.1981 is, that "**While there is no ban according to rules, GMs should satisfy themselves that the married daughter will be the bread winner of the bereaved family.**"

7. As regards limitation, the learned counsel for the applicant submits the applicant has filed application for compassionate appointment on 20.10.2012 and thereafter she submitted various representations dated 04.06.2013, 04.12.2013 and 12.12.2013 but till today her case was not considered by the respondents. Further, it has been submitted that the Annexure-R/1 letter dated 05.12.2012 has not been communicated to the applicant's mother. Therefore, allegation of limitation does not hold good.

8. The learned counsel for the applicant also cited the judgment of different Hon'ble High Courts namely Bombay High Court in Writ Petition No.11987/2012 (*Sou. Swara Sachin Kulkarni v. The Superintending Engineer, Pune Irrigation Circle & Anr.*) dated 06th December, 2013, judgment of Hon'ble Chhattishgarh High Court in Writ Petition (S) No.296/2014 (*Smt.*

Sarojni Bhoi v. State of Chhattisgarh & ors.) decided on 30.11.2015 and the judgment of Hon'ble Allahabad High Court in Writ petition No.60881/2015 & 2 others (*Smt. Vimla Srivastava v. State of UP & Another*) decided on 04.12.2015 covering the same issue. The Hon'ble High Court of Chhattisgarh discussing the issue extensively, has held in para 29 that "**to exclude married daughter for consideration from compassionate appointment is void and inoperative.**" Similarly, the Hon'ble Bombay High Court while deciding the judgment has held that "**the stand of the State that married daughter will not be eligible or cannot be considered for compassionate appointment, violates the mandate of Articles 14, 15 and 16 of the Constitution of India. No discrimination can be made in public employment on gender basis.**"

Taking forward the same view, the Hon'ble Allahabad High Court has observed that "**the basic rational and the foundation for granting compassionate appointment is thus the financial need of the family of a deceased government servant who has died in harness and it is with a view to alleviate financial distress that compassionate appointment is granted..... Marital status cannot disqualify an applicant and any discrimination on the ground of marital status would be violative of Articles 14 and 15 of the Constitution. Secondly, it has been urged that there can be no discrimination between a son and a daughter in the grant of compassionate appointment and any discrimination on the ground of gender violates Article 15 of the Constitution.**"

9. It is surprising indeed that the respondents have rejected the candidature of the applicant, merely on the ground of her being a married daughter. Surely, they are aware of the clarification issued by their own Board, if not the pronouncements of various Hon'ble High Courts, on the subject.

10. In the light of the above discussions, the pronouncements cited above, and the clarification issued by the Circular of Railway Board itself, the Annexure-A/7 letter dated 11.03.2014 and 18.12.2013 is quashed. The respondents are directed to consider the request of the applicant for appointment on compassionate ground urgently in accordance with the policy/guidelines applicable, along with the other eligible candidates, and take decision on the same, accordingly.

11. The OA is thus allowed as stated above. No costs.


[Praveen Mahajan]
Administrative Member

Rss

Received copy of order

for 24/8/68
for Parker Mathews
P.W.

Copied
22.8.68